COMMITTEE ON HOUSE ADMINISTRATION
REPUBLICANS
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Subcommittee on Elections Voting Rights Act Findings: Minority views

The Majority of the Subcommittee on Elections ("Majority") has held field hearings across the United States in 2019, encompassing seven different states and over 13,600 miles of air travel. The Majority has called 70 witnesses and has heard over 20 hours of witness testimony, including responses to hundreds of questions by 27 different members of Congress. The task: a fact-finding mission to support a new coverage formula that would serve as the basis of a reauthorization of Section 4 of the Voting Rights Act (VRA). Even with this gargantuan effort, and a total voting-eligible population (VEP) of over 63 million people in the states visited, the Majority has not produced a single witness that was unable to vote in the 2018 election. The Majority has failed to talk about voter turnout in 2018, which was historically high especially among minority communities. This legislation is not even within the House Committee on Administration's jurisdiction; it properly resides within the Judiciary Committee. For these reasons, the Minority of the Committee on House Administration opposes the conclusions drawn by the Majority in their Report.

Procedural Views

The VRA reauthorization process has historically been conducted in a bipartisan manner within the jurisdiction of the House and Senate Judiciary Committees. In 1965, the law had bipartisan support first when it was first signed into law by President Lyndon B. Johnson and has been since been reauthorized by five different Republican presidents. It has only been since the U.S. Supreme Court decision in *Shelby County v. Holder* that Democrats have decided to politicize the Voting Rights Act.

Rather than following the precedent of tasking the Judiciary Committee with creating a new formula, the Democratic Leadership has given the responsibility to the Subcommittee on Elections under the House Administration Committee. The Subcommittee on Elections has only one Republican member. Although the Majority has been gratuitous in our requests for non-committee members to attend the VRA field hearings, there have been a few field hearings where there were no Republican members present at all – a situation that would have surely been avoided had Democratic Leadership followed the precedent of having the process go through the much larger Judiciary Committee.

Also concerning is that H.R. 4, the Section 4 reauthorization vehicle, was introduced in February 2019, nine months before the release of this report. It appears the Democrats had a solution in mind before the fact-finding process even began. This process of putting the cart before the horse is not new. Every major piece of legislation put forth by the Majority this Congress has passed on a partisan roll-call with minimal legislative hearings. Had there been a more bipartisan process, perhaps there would have been even a modicum of Republican support for these bills.

Substantive Views

The original VRA coverage formula was based on two characteristics of states and localities that Congress found to be "evidence of actual voter discrimination": (1) the use of "tests or devices" for voter registration; and (2) a voter turnout percentage at least 12 points below the national average for the 1964 presidential election. The Court in *Shelby County* was explicitly clear that "Congress may draft another formula based on current conditions." The use of tests or devices for voter registration have been banned nationally for 40 years, so it would make sense then, to focus these VRA hearings on an applicable voter turnout percentage, perhaps in light of the 2016 presidential election.

However, it has become apparent through these field hearings that the Majority has determined that voter turnout is no longer a useful metric, but an offensive one. Rep. Terri Sewell commented in the Alabama field hearing that, "What [Republicans] fail to realize, and it is disingenuous on their part, is that just because you can go and register to vote, doesn't mean that their laws don't cause voter suppression. They are not mutually exclusive." In fact, a witness called by the Majority in the North Dakota field hearing claimed that questions regarding voter turnout were "inappropriate and unacceptable."

The Majority does not want to discuss voter turnout because it was historically high. For example, witness Andrew Gillum said in the Ft. Lauderdale hearing, "Turnout among voters in our State was 57 percent African-American; 48 percent of Hispanics voted; 67 percent of white voters voted. Those are increases of 143 percent, 161 percent, and 134 percent respectively. However, the Majority has stated that higher voter turnout is irrelevant or misleading because the population of an area can increase. In the Cleveland, OH field hearing, Rep. Terri Sewell said, "Just because you have higher turnout and higher voter registration doesn't mean that we don't have voter suppression. […] I am sure that the State of North Dakota's voter registrations are higher than they were in the 1960s, probably record high, since their population has grown." However, the addition or subtraction of population in a given area does not matter in calculating voter turnout; the calculation will always be number of ballots divided by registered voters.

The Majority also cites voter list maintenance, voter ID requirements, and the closure of early voting sites as evidence of existing barriers to voting. Ironically, states administer each of these practices in order to make it easier for citizens to vote.

Voter list maintenance, unfairly referred to by Democrats as voter "purging" or voter "caging," is simply the practice of removing ineligible voters from the state registration rolls. This practice serves a number of purposes, primarily to ensure that the rolls are clean and accurate so that lines move more quickly on Election Day. Recent reports have indicated that some counties in the United States have more registered voters than eligible voters. Further, states are required to do this under the National Voter Registration Act, and the process of mailing postcards over the course of 6 years to determine the eligibility of voters – of particular chagrin to the Majority – has been approved by the U.S. Supreme Court.

Voter ID requirements are administered by states in order to prevent fraud at the polling place on Election Day. We do not agree with the Majority that voter ID laws disenfranchise voters. We have heard testimony from Secretaries of State that their respective states will do anything possible to ensure that eligible voters are able to obtain a valid ID suitable for voting. In fact, a recently published study conducted by the National Bureau of Economic Research concludes that even strict voter ID laws do not have much of an effect on turnout. It is also worth mentioning again that the Majority has yet to produce evidence of any voter unable to vote because of voter ID laws or otherwise.

Finally, we have heard evidence that states close early voting locations for two purposes: (1) because they are moving to larger vote centers in order to streamline the process and save money; or (2) to more efficiently spend state resources in light of the increase in votes cast by mail. If the Majority's position is correct, that states are intentionally closing polling places to disenfranchise voters, they are doing a terrible job. According to PEW Research Center, there is only a 10-percentage point difference between voters that cast their ballot on Election Day and those that vote early (55% to 45%). This study also concludes that 76% of voters said it was "very easy" for them to vote and just 8% say it was "somewhat or very difficult."

The drafters of H.R. 4 knew the above "evidence", namely the practice of voter list maintenance, voter ID requirements, and financial decisions to close early voting locations, were not strong enough to merit a new Section 4 formula. Trends in voter turnout percentage also do not fit their narrative. Therefore, they came up with an additional component to bolster their formula: consent decrees, settlements, or "other agreements" between election jurisdictions and plaintiffs. If H.R. 4 were to become law, jurisdictions that are sued and settle their case would be penalized under the Act, as these settlements would serve a "voting rights violation." Such violations could eventually lead to the election jurisdiction being deemed a covered jurisdiction. This would inevitably lead to Republicans and Democrats racing to file nuisance lawsuits and rushing settlements through in order to politically disadvantage the other side.

If Congress is to reauthorize Section 4 of the Voting Rights Act, it should at least consider the possibility of basing a new formula on voter turnout, just as the original law did. However, the Majority has concluded that turnout should not be a component of a new Section 4 formula, and for that reason, we cannot agree with their submitted Report.

Conclusion – The high burden for federal involvement in requiring preclearance of election jurisdictions established by the *Shelby County* decision, permitting Congress to establish a contemporaneous record, has not been met by the Majority.